IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2348 OF 1993
AND
WRIT PETITION NO.2349 OF 1993

M/s. Parasrampuria Estate
Developers Pvt. Ltd. & Ors. .. Petitioners.

V/s.

S.C. Prasad & Others .. Respondents.

Mr.Mohan Jaykar with Ms.Neha Bhide & Mr.Shreyas Mehta i/b. Khaitan & Jayakar for the petitioners.

Mr.R. Asokan with Mr.M.I. Sethna for the respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 26TH SEPTEMBER, 2005.

P.C. :

1. These petitions arise out of the proceedings initiated under Chapter XX-C of the Income Tax Act, 1961 ('the Act' for short) seeking to acquire properties namely; flat Nos.1301/1401 so far as writ petition Nos.2349 of 1993 is concerned with flat Nos.903/1003 so far as writ petition No.2348 of 1993 is concerned in Parasrampuria Tower No.5, Oshiwara Village, Near Millat Nagar, Lokhandwala Complex, Andheri (W), Bombay 400 058 ('the said property').

2. The pre-emptive purchase under chapter XX-C were on the ground that the consideration disclosed

in the sale documents fail short of the real market value of the properties.

3. The potent contention amongst various others raised in these petitions, at the bar, which alone is sufficient to dispose of these petitions, is that the amount of apparent consideration in both the petitions, as determined by the competent authority, had not at all been tendered by the Central Government to the parties to the form 37-I as was required to be tendered under Section 269UF read with Section 269UG of the Act. Thus, in the submission of the learned counsel appearing for the petitioners, the consequences of Section 269UH of the Act resulting in abrogation of the order must flow.

4. On being asked Mr.Asokan, learned counsel appearing for the respondent-department admits that till today no amount of apparent consideration has been tendered to the petitioners or deposited in any of the account of the Central Government with respect to the transactions in question.

5. In the above view of the admitted facts, in our considered view, operation of Section 269UH of the Act in no way can be arrested. Consequently, the right to purchase exercised by the Central Government

stands abrogated with the failure on the part of the department to pay the amount of apparent consideration. In the result the impugned orders cannot stand to the scrutiny of law. The impugned order incorporated at Exhibit 'E' (in both the petitions) are, therefore, liable to be quashed and set aside. Accordingly, they are set aside and it is hereby declared that the properties in question (referred to in para 1 supra) shall re-vests with the petitioners in both the petitions in accordance with the provisions of Section 269UH of the Act.

6. The view taken by us is in consonance with the law laid down by the Apex Court in the case of Union of India & Another V/s. Dr.A.K. Garg & Others [256 ITR 660] wherein on a more or less similar facts, order of pre-emptive purchase was set aside.

7. Both petitions are thus, allowed. Rule in each of them is made absolute in terms of prayer clauses (a) and (c) with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)